Crl.A. 335/2001
BEFORE
HON'BLE MR JUSTICE P.G.AGARWAL

ORAL

Heard Mr. H.R.A.Choudhury, learned Senior Counsel appearing for the appellants and Mr. P.C.Gayan, learned P.P., Assam.

2. In Sessions Case No. 29(N)/94 eighteen accused persons were tried by the learned Additional Sessions Judge, Nagaon for commission of offence under Section 147/ 448/302 IPC. During trial, accused Abdul Rakib died. On conclusion of trial three accused persons were acquitted and remaining 14 appellants, who are before us, have been convicted by the learned trial Court under Section 147/448/323 IPC. They have been sentenced to undergo imprisonment for two years for the offence under Section 147 IPC and have also been sentenced for one year imprisonment for the offence under Section 448 IPC and 323 IPC, which would run concurrently.

3. The deceased Azizur Rahman was serving as Clerk at Ambari High School. On 13.07.90 while he was working in the school, the accused appellants went to the school and sought for some records from him. As the victim refused, they started altercation with him. The accused persons tried to assault Azizur Rahman, who took to his heels, but the accused chased him and after assaulting carried him along with them. Nasir Ahmed Laskar (PW-1), a teacher in the school, who saw the incident, tried to intervene, but he was thrown out. PW-1 lodged the FIR whereupon the police started investigation and recovered Azizur Rahman and he was sent to hospital for treatment. The injured was sent back to home after two days. He again suffered pain etc. and was removed to hospital where he died on 19.08.90 i.e. twenty days after the incident.

4. During trial, the prosecution examined as many as 10 witnesses and the defence examined two.

5. PW-8 Dr. Dilip Kumar Baruah held autopsy on the deceased Azizur Rahman and found no injury. The doctor was, however, of the opinion that the death was due to perforated duodenal ulcer and its complicacy arising from said ulcer. The trial Court therefore gave benefit to the accused persons and held that this is not a case under Section 302 IPC.

6. So far the incident of assault is concerned, there is evidence of PW-1 Nasir Ahmed, who has given a detailed statement which is supported by Rafique Ahmed (PW-2) another witness. We also find that there is a dying declaration Ext.8, recorded on 11.08.90. The evidence on record further shows that the accused persons were all outsiders and they had no business in the school and as such, the deceased had rightly refused to show the school records to them whereupon he was assaulted. The deceased might have been suffering from duodenal ulcer and as a result of assault there was perforation on the ulcer, but there is no material to hold that the accused persons knew about the ulcer of the deceased and hence the deletion of Section 302 IPC by the trial Court was in accordance with law.

7. In the present case, we find altogether 14 persons have been convicted on the basis of the dying declaration Ext.8. From perusal of the evidence of PW-1 and others along with the dying declaration, we find that there are materials against the accused appellant Nos. 1, 3, 6, 7, 8, 9, 11 & 12 only and so far the accused appellants No.2, 4, 5, 10, 13 and 14 are concerned there is no specific mention of their names. Accordingly, the appeal filed by appellant No. 2 Sahabuddin Barbhuya; No.4 Abdus Sattar Choduhury; No.5 Botir Ali @ Ataur Rahman; No.10 Farjan Ali; No.13 Baharuddin Barbhuya and No.14 Ashikur Rahman, is allowed. Their conviction and sentence are set aside. The conviction of other appellants namely, No.1 Kirendra Sarkar, No.3 Fakharuddin, No.6 Fakaruddin Ahmed, No.7 Muslimuddin, No.8 Abdul Gafur, No. 9 Abdul Karim, No.11 Noor Islam and No.12 Kuti Miah under Section 147/448/320 IPC is maintained.

8. Coming to the imposition of sentence in respect of accused appellant Nos. 1, 3, 6, 7, 8, 9, 11 and 12 we provide as follows:-

(1) for the offence under Section 147 IPC, these eight accused appel

lants are sentenced to undergo imprisonment for one year;

(2) for the offence under Section 448 IPC, the these eight accused appellants shall undergo imprisonment for six months; and

(3) for the offence under Section 323 IPC, the accused appellants shall undergo imprisonment for one year.

All the sentence shall run concurrently.

9. The appellant Nos. 1, 3, 6, 7, 8, 9, 11 and 12 shall surrender before the learned Sessions Judge, Nagaon to serve out their sentence.

10. Send down the records to the learned Sessions Judge, Nagaon, who shall take the eight accused appellants into custody to serve out the sentence.